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COMMUNICATIONS COMMISSION  
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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 ) CC DOCKET 92-77  
Billed Party Preference )  
for 0+ InterLATA Calls )

COMMENTS OF  
AMERICA'S CARRIERS TELECOMMUNICATIONS ASSOCIATION  
ON THE  
FURTHER NOTICE OF PROPOSED RULEMAKING

America's Carriers Telecommunications Association (ACTA), by its attorneys, submits its initial comments in the above captioned proceeding. ACTA is a national trade association of interexchange carriers and operator service providers formed to advance and maintain competitively supplied telecommunications services for all the people of the United States at reasonable charges.

**Introduction:** Members of ACTA which have contacted the Association's leadership on the FCC's release of its Further Notice of Proposed Rulemaking (FNPR) on whether or not to adopt Billed Party Preference (BPP) are opposed to its adoption.

**FCC "Construct" of BPP Benefits:**<sup>1/</sup> The FCC relies on several factors for resurrecting BPP from its regulatory oblivion - the hundreds of millions of dollars in "consumer cost savings," that are "calculated" will be achieved; to "increase" competition to AT&T's dominance in this industry segment; to refocus the competitive energies of the industry from

1/ The FCC wants the "benefits" of BPP available by June, 1997. (FNPR at ¶ 8).

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paying aggregator commissions to obtain access to "aggregator locations" to provide service; to improving services to end users; and to make calling from aggregator locations more "user friendly." The FCC stated -

We will mandate BPP only if we conclude that, as indicated by the current record, its benefits outweigh its costs and that these benefits cannot be achieved through alternative, less costly measures. (FNPR at ¶ 2).

ACTA submits that only a strained reading of the record made two years ago can support a conclusion that the benefits of BPP outweigh its costs. Nevertheless, ACTA has encouraged its members to focus their research, calculations and comments on demonstrating that BPP is a high-priced solution looking for a problem. ACTA submits in a more positive vein that the consumers the Commission is attempting to assist would be better served by concentrating on pushing the development of more promising technological advances, **like the information highway**, than forcing the expenditure of hundreds of millions of dollars attempting to make it "easier" for hotel and motel guests to "dial around" a presubscribed service provider.

**Specific Issues for Comment:** The specific issues on which the Commission requested comment are listed hereinafter. In addition, each of the FCC's tentative conclusions is listed as specific issues on which the FCC seeks comment. ACTA's purpose in setting forth this list is to summarize the vast scope of the facts and policies its consideration of BPP involves. The scope of the factual and interrelated policy determinations is one of extraordinary complexity. When considered in the context of the huge expenditures actual implementation of BPP would entail, a record of the most exacting proportions must be built if the Commission hopes to sustain a decision to adopt BPP.

**Access Codes** - What is the extent of consumer confusion and inconvenience from using access codes? To what extent will consumer acceptance on using access codes change over time?

ACTA submits that consumer confusion over access codes is largely a thing of the past. What confusion still exists will be eradicated by experience. More importantly, if the Commission wishes to rely on public confusion as a basis for adopting such an expensive program as BPP, it cannot do so on assumption. The Commission must document the extent of confusion and whether the price of BPP to eliminate that confusion will be reasonable and proportionate to the effort and burdens such adoption will impose. ACTA submits that the ability of any BPP proponent to make such a showing is doubtful at best. The Commission cannot move ahead however, unless the record facts are sufficient to eliminate that doubt.

**Wireless impact** - What impact will wireless and other new technologies have on the need, benefits and the cost/benefit relationship of BPP?

ACTA submits that no finding is possible on this question. Wireless technology is in its infancy compared to what it may be in five years. A program like BPP which will not take effect for at least two more years may have to be radically altered or abandoned if wireless technology further erodes the already limited basis for a BPP policy. The Commission cannot adopt a policy in such a factual vacuum, the risk of stranding huge amounts of investment is far too great.

The following summary of specific issues underscores the multiplicity, incredible minutiae and complexity of inter-relationships of some of the other very thorny questions involved in this proceeding and for which the record must nonetheless be fully developed.

**IntraLATA BPP** - What if the states do not adopt BPP for intraLATA? If they do?

**OSS7 Cost Treatment** - To what extent should OSS7 costs be treated as BPP costs? What are the needs and possible other uses of OSS7 in the end office to which the costs of installing it could be apportioned? FNPR, ¶ 23.

**OSP Conversion Costs** - Is the FCC's estimated \$120 million costs to OSPs to convert to BPP accurate and is a five year amortization period for this total cost a correct period for amortization? What are the BPP conversion and operating costs of OSPs other than AT&T, MCI, Sprint? FNPR, ¶ 28.

**Impact on Local Exchange Competition** - What effect will BPP have on local exchange competition, considering that BPP will force all interLATA calls to be routed through a virtual LEC bottleneck? FNPR, ¶ 35.

**Alternative Options** - What specific alternatives to BPP are available to achieve the benefits (more user friendly, less confusing calling, an increase in competition) at the "acceptable" cost levels the FCC assumes BPP will require? FNPR, ¶ 38.

**Reconsideration of Phase I** - If BPP is not adopted, should the FCC reconsider Phase I of this Docket 92-77? FNPR, ¶ 38.

**All 0+ and 0- Calls** - Whether, if BPP is adopted, it should apply to all interLATA 0+ and 0- calls, as the FCC tentatively has concluded? FNPR, ¶ 47.

**Independent Telco Territories** - Whether, if BPP is adopted, it be made available in all independent telco territories as the FCC tentatively has concluded? FNPR, ¶ 49.

**Customer Billing Information Mandate** - Whether all OSSs used for BPP should be equipped with OSS7 as necessary to provide OSPs with billing information received from callers, so callers need not repeat the information to the OSP, as the FCC has tentatively concluded? FNPR, ¶ 50.

**Prison Phones** - Whether inmate phones should be exempted from BPP and whether prisons which order service from an OSP which charges rates below AT&T's for interLATA and intraLATA calls should be exempted from BPP? FNPR, ¶51.

**Anti-fraud Tariffing** - Whether LECs providing LIDB queries should be required to tariff an anti-fraud service, e.g., some form of signaling to an OSP of a suspicious call? FNPR, ¶ 51.

**Price Caps** - Should BPP be treated as a new service for price cap purposes as the FCC tentatively has concluded? FNPR, ¶ 57.

**BPP Cost Recovery Sources** - Whether BPP costs should be recovered from only BPP calls, from BPP and 10XXX calls, or from all operator calls? FNPR, ¶ 59.

**Jurisdictional Separations** - Whether, given the FCC's tentative conclusion that BPP will be implemented for both interstate and intrastate interLATA traffic as well as intraLATA traffic changes to existing separations rules, therefore will not be necessary, and there will be no need to convene a § 410 joint board to consider allocation of costs between state and federal jurisdictions for costs categories affected by BPP? FNPR, ¶ 60.

**Presubscription** - (a) Whether, if BPP is implemented, each LEC should be required to notify its subscribers of their rights to choose a 0+ carrier and to provide all subscribers with a ballot for doing so? FNPR, ¶ 65; (b) Whether subscribers that do not respond to the ballots should be defaulted to their 1+ carrier, as the FCC has tentatively concluded? FNPR, ¶ 67; (c) Whether subscribers who do not vote should be allocated in proportion to the selections of those that do vote? FNPR, ¶ 67.

**Secondary Carriers** - How should secondary carrier arrangements be handled and how then should TOCSIA's call branding requirements apply in a BPP environment? FNPR, ¶ 69.

**Ten vs. Fourteen Digit Screening** - What are the relative costs of ten versus fourteen digit screening in light of the FCC's determination not to adopt any BPP design that gives either LECs or OSPs the exclusive ability to issue line number cards? FNPR, ¶ 74.

**Commercial Credit Cards** - Whether BPP if implemented should accommodate commercial credit cards, as the FCC has tentatively concluded? FNPR, ¶ 80.

**No Dial-Around BPP** - If BPP is adopted, the FCC will amend § 64.702(a) to prohibit aggregators from programming phones to convert customer 0+ calls that bypass the BPP system. FNPR, ¶ 82.

**FCC Assumptions:** The FNPR relies on many "assumptions" upon which tentative inferences and conclusions are drawn. Where such inferences and conclusions are drawn about contested material facts, they are usually made in support of adopting BPP. Conversely, when the inferences and conclusions that are drawn disfavor BPP, their validity is denigrated. The more significant of the FCC's "assumptions" are listed below:

**Access Codes** - Consumers benefit by not having to enter the extra digits required to use access codes or not having to remember the code or to retrieve the code and calling instructions, and that the likely use of a new 101XXXX code in 1995, versus today's 10XXX, will only add to the confusion and inconvenience - FNPR, ¶ 10.

**Higher Charges** - The FCC assumes BPP would not apply to intra-LATA calls and that the public still would save \$280 million by avoiding high cost OSPs - FNPR, ¶ 11. The FCC merely notes that no attempt has been made to quantify the possible benefits of OSP pricing below the largest OSPs - FNPR, ¶ 11, n. 23.

**Shift in Competitive Focus** - The FCC assumes that forcing OSPs into BPP will result in refocusing competitive efforts from aggregators to end users, resulting in lower prices and better service - FNPR, ¶ 12.

**Estimated Overcharges by Third Tier OSPs** - The FCC calculates that by 1997, based on TOCSIA Rpt. data, third-tier OSPs will receive \$370 million in charges above what AT&T, MCI and Sprint would receive, based on a composite rate for their interLATA calls - FNPR, ¶ 11, n. 24. The FCC calculates that \$430 million in third-tier OSP revenues are attributable to amounts charged in excess of the composite MCI, AT&T and Sprint rate. The assumptions on which this figure is based are as follows.

1991 third tier OSP revenues of \$1.2 billion;

36% of these revenues (\$430 million) are in charges above the composite AT&T, MCI and Sprint rate;

A 4.3% growth rate based on toll traffic growth rate of 4.3% from 1984-92;

That market shares, between 1991-97, of third tier OSPs decline to 8.5% from 12.7% (a third) of away-from-home calls as dial-around grows;

That, by 1997, third tier OSPs would receive \$370 million in charges above the composite AT&T, MCI and Sprint rate; and

That 23.8% of the differential is attributable to intraLATA calling, as the TOCSIA Rpt. shows that 47.5% of traffic is intrastate and the FCC assumes 50% of that is intraLATA.

**Estimated Consumer Savings** - Of the \$500 million in commissions paid for both interLATA and intraLATA calls in 1991, the FCC calculates that by 1997,

\$340 million of that amount could be saved. The assumptions on which this is based are as follows.

1991 OSP revenues of \$6.1 billion, of which \$1.2 billion was from third tier OSPs;

A 4.3% annual growth in OSP revenues from 1991-1997, for a 1997 revenue figure of \$7.9 billion, of which \$1.5 billion is from third tier OSPs;

The \$7.9 billion in revenues is reduced to \$7.7 billion on the assumption that consumers shift to lower priced OSPs,;

18.1% of these revenues are intraLATA and the dial-around rate increases to 50% by 1997, leaving \$3.2 billion in interLATA OSP revenues;

1991 commission payments equalled 12%, multiplied by 1997's \$7.7 billion, equals \$380 million;

Compensation to competitive payphone providers (CPPs) increases to \$12 per phone, per month, reducing savings on commissions by \$22 million to \$360 million therefore,

This is then reduced by \$17 million in savings due to BPP's impact on \$280 million in third tier revenues, resulting in about \$340 million in savings to the consumer - FNPR, ¶ 12, n. 25.

**Hotel Surcharges** - The FCC assumes that hotels and motels will not replace lost commissions with other surcharges, because of the adverse public reaction that would result. FNPR, ¶ 13.

**Increased Competition for AT&T** - AT&T has an advantage in getting aggregator contracts because of "its large customer base and its use of a proprietary calling card." - FNPR, ¶ 14. Because of its proprietary calling cards' acceptance on a broad basis, AT&T is able to win presubscription contracts against competitively priced OSPs even when offering lower commissions - FNPR, ¶ 14, n. 28.

**BPP Will Reduce Regulation** - BPP will significantly reduce the number of consumer complaints, and thus the need to more actively regulate OSP rates, and thereby allow the FCC to "streamline" the regulation of AT&T's operator services and eliminate the policing of blocking, notice and call-branding requirements - FNPR, ¶ 16.

**BPP Will Reduce OSP Costs** - BPP will reduce OSPs' cost of collections and uncollectibles because all users will select their carrier - FNPR, ¶ 17.

**BPP Will Enhance Infrastructure** - Installing OSS7 in end offices will improve network signaling and make new services available. This assumption is made even though the LECs, other than Ameritech, have no current plans to deploy new services relying on OSS7 in the end office - FNPR, ¶ 17.

**OSS7 Costs** - \$480 million to provide OSS7 in end offices would be attributable to BPP alone. FNPR, ¶ 23.

**Increased Operator Services Costs** - Because under BPP more calls will be routed to LEC operator positions rather than OSPs, via access codes or on a 0+ basis, LEC costs will increase by an additional \$120 million per year in recurring costs and \$180 million in nonrecurring costs - FNPR, ¶ 24.

**Offsets** - The FCC assumes that 75% of these increased LEC OSS7 and Operator costs would be offset by cost reductions to OSPs - FNPR, ¶ 25.

**Additional Implementation Costs** - LEC costs to implement BPP will include \$280 million for software modifications to operator switches; \$130 million for trunk terminations and rearrangements; and \$30 million annually for BPP updates, maintenance, etc. - FNPR, ¶ 26.

**BPP Cost Recovery** - The FCC seems to be assuming that it is appropriate that the LECs will use a recurring charge of approximately 29% of their nonrecurring expense to recover their non-recurring capital investments and expenses, which means they intend to recover expenses over five years, and principal, interest and related costs of capital over their life expectancy, and that it is also appropriate that the LECs add an overhead loading factor of 25% to these costs - FNPR, ¶ 27, nn. 43 and 44.

**OSP Cost Recovery** - The FCC also seems to assume it appropriate that the OSPs will also recover their BPP conversion costs over the same 5 year period - FNPR, ¶ 28, n. 48, and that relying on the cost estimates of AT&T, MCI and Sprint will produce accurate cost estimates for all OSPs, although the FCC notes that no other OSPs provided any cost estimates - FNPR, ¶ 28.

**Quality** - The FCC assumes that the provision of billing information twice under BPP, and possible increase in access time, will not materially degrade the quality of operator services. FNPR, ¶ 29-31.

**OSP's Ability to Compete** - The FCC assumes that small OSPs will be able to offer low rates and high quality service in order to compete, similar to small



IXCs in the 800 service market by concentrating on business customers and offering nationwide originating capability using a secondary carrier - FNPR, ¶ 32.

**CPPs Ability to Compete** - The lack of commissions will not prevent competition with LEC payphones because, if the FCC adopts BPP, it will revise its payphone compensation rules, and move to a per-call compensation mechanism. It is assumed that this can be done before BPP goes into effect although the FCC feels that there is no necessity to revise its payphone compensation plans now. FNPR, ¶ 33, n. 53.

**LEC Monopolization of Operator Services** - Despite the fact that BPP will require OSPs to subcontract all operator services to the LECs, the FCC assumes that this will not create a LEC monopoly over operator services, because it is further assumed that the threat of monopolization arises solely out of the need BPP creates to interface with two operator service systems. The FCC therefore fails to recognize the far more realistic possibility that LEC control means LEC self-dealing, which has nothing to do with whether the user is or is not concerned about two systems - FNPR, ¶ 34.

**Non-equal Access** - The US West and USTA assertions that "little or no expense" would be required to implement BPP in non-equal access areas is correct - FNPR, ¶ 40, n. 62.

**Only Public Phones** - The LEC assertion that limiting BPP to public phones would not significantly reduce BPP costs - FNPR, ¶ 40, n. 62.

**Line Number Cards** - If customers in a BPP environment were permitted only one line-number based calling card, the customer's chosen OSP could issue its own line number calling card with the same PIN or, upon customer authorization, could substitute its own line-number card (with a different PIN) for the LEC card and OSPs could in addition, do their own billing for line-number card calls because they would have the names and addresses in their records. FNPR, ¶ 73.

**Statistical Data/Studies Referred to or Relied On by the FCC:** The FCC also relied on or disparaged certain studies in reaching its conclusions set forth in the FNPR. These are listed hereinafter.

**Access Codes** - A TOCSIA Report of 1991 ("TOCSIA Rpt.") that an estimated one third of operator calls were made with an access code - FNPR, ¶ 10, n. 19.

**Comptel Study** - A November, 1993 Comptel study ("Comptel Study") that the only benefit of BPP is that it alters the routing of operator service calls. The FCC finds the study unpersuasive - FNPR, ¶ 10, n. 18.

**Higher Charges** - OSP charges are 19 cents per minute higher than AT&T, MCI or Sprint - \$0.53 vs. \$0.34 (36%) according to the TOCSIA Rpt. - FNPR, ¶ 11. The FCC bases its analysis on six third tier OSPs which accounted, in 1991, for 40% of the third tier OSP revenues - FNPR, ¶ 11, n. 22.

**Consumer Savings** - The FCC dismisses the Comptel Study's assertions that no savings would occur due to higher payphone compensation and increased aggregator surcharges regardless of the potential for adverse consumer reactions thereto, because payphone compensation will not be the \$42-60 million Comptel believes, but only \$22 million, and the FCC is convinced that consumer opposition will be effective in keeping surcharges from getting oppressively high - FNPR, ¶ 13, n. 14.

**AT&T Advantage** - The FCC relies on an ex parte filing by Pacific Bell, submitted June 25, 1993, for the propositions that 35% of all calling card calls are made with an AT&T card while less than 20% in the aggregate of calls are made with OSP cards, and that an access code must be used in most cases - FNPR, ¶ 14, n. 28.

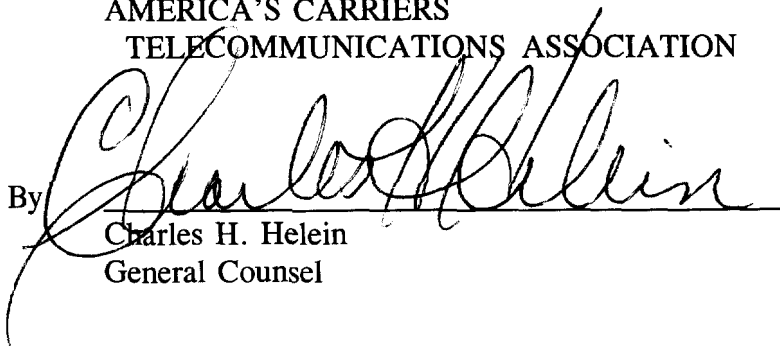
**BPP Will Reduce Regulation** - The FCC and the states continue to receive complaints on OSPs, the FCC receiving an average of over 100 per month for 1992 and 1993, citing the FCC's Consumer Complaints and Inquiries About Common Carrier Issues Report for 1990, 1992 and 1993 - FNPR, ¶ 16, n. 31.

**The Unimportance of Payphone Commissions** - The FCC relies on a US West ex parte filing, of August 16, 1993, for the proposition that the "significant" increase in commissions available to payphone providers and aggregators in recent years has not had a meaningful effect on the number of payphones in service - FNPR, ¶ 33, n. 57.

ACTA opposes Commission reliance on the foregoing assumptions. The chance of serious factual error leading to bad policy are all too obvious. ACTA hopes that the substantive comments presented by all parties will enable the Commission to resolve many of the issues on a rational basis and one that complies with the requirements applicable to the making of a record sufficient to sustain whatever action the Commission determines to be necessary.

Respectfully Submitted,  
AMERICA'S CARRIERS  
TELECOMMUNICATIONS ASSOCIATION

By

  
Charles H. Helein  
General Counsel

Of Counsel:  
Helein & Waysdorf, P.C.  
Suite 550, 1850 M Street, N.W.  
Washington, D.C. 20036

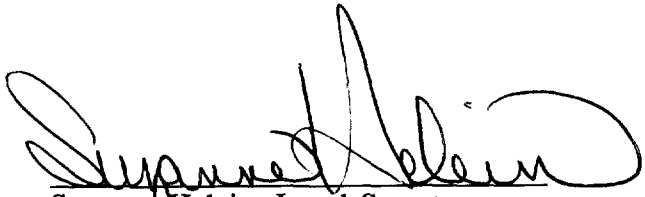
**CERTIFICATE OF SERVICE**

I, Suzanne Helein, a secretary in the law offices of Helein & Waysdorf, P.C., do hereby state and affirm that copies of the "Comments of America's Carriers Telecommunications Association on the Further Notice of Proposed Rulemaking," in CC Docket 92-77, were served via hand delivery, this 1st day of August, 1994, on the following:

Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Federal Communications Commission  
Policy and Program Planning Division  
1919 M Street, N.W.  
Room 544  
Washington, D.C. 20554

ITS, Inc.  
2100 M Street, N.W.  
Suite 140  
Washington, D.C. 20037



Suzanne Helein, Legal Secretary